

joke, would you say. With all the new legislation, one might assume everything on the Internet is monitored.

Q. I mean to your knowledge has the Secret Service monitored your e-mails from time to time?

A. Not to my knowledge without our handing it to them, without us faxing them a copy of the e-mail.

Q. Have you ever, when they've made threats on your life, have you given it to any other like local law enforcement?

A. We have given some of the threats on ourselves to the local FBI office, and they don't really care.

Q. Nice guys. Don't feel neglected. People out here have trouble getting them to care, too.

Who are the officers of ProBush.com, Inc.?

A. Michael Marino, my brother, and myself, Ben Marino.

Q. I forgot to ask Michael this. Who is the President?

A. Michael is the President, and I would be your CFO or COO.

Q. You don't hold any like treasurer or anything

1 them. Right?

2 A. I wouldn't call it support. I think they're

3 more interested in riding off any coattails or

4 any waves we were to make. I don't think

5 they're overtly intent on helping us, rather

6 than following any kind of publicity we could

7 get.

8 Q. I see. Have you talked to Mr. Gannon?

9 A. I have never spoken with Mr. Gannon

10 personally.

11 Q. Do you know that he used to be involved in

12 Republican party politics before?

13 A. I would say it doesn't surprise me in the

14 least, but I did not know that.

15 Q. Have you ever received any in kind or other

16 support from politicians or political

17 organizations?

18 A. I'm sorry, can you repeat the beginning?

19 Q. In kind or other kinds of support other than

20 financial?

21 A. In kind?

22 Q. That's like an in kind donation, like giving

23 you advertising space for free, website space

24 for free.

25 A. At most, maybe when there was correspondence

1 like that?

2 A. No.

3 Q. You own 49 percent?

4 A. That's correct.

5 Q. Have you guys ever thought about issuing shares

6 and selling them?

7 A. We have not thought about that.

8 Q. How is ProBush.com funded?

9 A. In the beginning it was funded from our own

10 pockets. As it began to generate some revenue,

11 all the revenue went back in to pay for the

12 expenses of the company. From time to time,

13 especially after this trip, we'll probably have

14 to put some of our own money back into it.

15 Q. To your knowledge has ProBush.com, the

16 corporation or the website, or you two

17 individually, you and Michael, received

18 financial support from any politician or

19 political organization?

20 A. Not to my knowledge. That could pretty much be

21 accepted as fact, because we would be the ones

22 receiving, and we have not received any money.

23 Q. I don't know if you would consider the Free

24 Speech Foundation to be a political

25 organization, but you do get some support from

1 with some other webmasters that my brother had

2 on the Internet, and he was expressing to them

3 what was going on, and they told -- you know,

4 some of the liberal websites expressed that

5 they were disappointed in the lawsuit, because

6 it infringed on their free speech, as well,

7 even if they shared similar opinions as the

8 parties who are opposed to us. I think they

9 might have put a link up and just a little

10 brief. I think Antiwar.com might have did that

11 for us. If there were any others, I wouldn't

12 really be aware of them. I remember that was

13 the one he mentioned to me. That would be the

14 only kind of thing I could imagine.

15 Q. I want to ask you, remember Michael talking

16 about this Amazon affiliate link. He said you

17 handled all that. What's that all about?

18 A. Amazon has this program on the Internet, which

19 basically -- I'm not even sure what it's

20 called. I forget what it's called. It's a way

21 for website publishers to collect money to keep

22 their websites running. It's not really meant

23 to be political or charitable or anything like

24 that.

25 You put a thing on your site, and you can

Exhibit 2

customize what you want it to say. You can say, "Help me, I'm poor. Please help me keep my website up." You can say, "We're getting sued by another company trying to steal our domain name. Help us." You can solicit money in any way you wish.

Our way to solicit money was, "Help us. We're in a lawsuit. Please donate money if you have any available."

Q. So is Amazon the host for that? I'm not quite following.

A. Amazon, keep in mind that Amazon is one of your larger Internet companies, so they're involved in everything, books to electronics, even to affiliate programs, which he was speaking of before.

When you are an Amazon affiliate, you know, I don't think we do it anymore, but say we were to sell a book on our site about President Bush. The link would go directly to Amazon when someone clicked on that, and our code would be embedded in the next page so we got credit for the sale.

So mostly Amazon does like link tracking and code tracking for affiliates and stuff like

that to make sure people are getting paid on their own referrals. This thing is just a totally different obscure program that they have to allow you to collect.

The point of it was that Amazon is a trusted company. So when I ask you for money, you're going to feel more comfortable giving it to Amazon than just giving it to me. Rather than just giving it to me, and you don't know what's going on. They are more of a trusted intermediary, almost like some sort of escrow.

Q. Do they then charge you a fee for collecting?

A. Yes.

Q. How much?

A. There's a small percentage.

Q. Like three, five percent, somewhere in there?

A. Something like that. One of the other things, now that I'm remembering more about it, I think they do receive -- when they donate the money through Amazon to us, they receive some sort of Amazon financial credit. Like if they donate \$20, I think they get like a \$5 gift certificate for the website. It's something along those lines.

Q. So, for example, when you talk on your website

and ask them for support in this lawsuit, would Amazon be the ones handling that, too, if people made contributions?

A. That is where the contributions are going. I'm actually not familiar with if the money goes to Amazon or if it's been moved to our bank account. I think there's a certain period of time that it has to be cleared before it can be deposited in our bank account. It is all electronic.

Q. They do it like monthly or something?

A. I really have no idea.

Q. Do you check that bank account from time to time?

A. Our bank account we check from time to time. I'm not aware of any transfers from Amazon in the recent six months to a year. The last time I looked on Amazon it was a couple hundred dollars. It just said like two hundred some dollars, and it shows like our goal and a little thermometer across the side.

Q. So you can look on some site on Amazon where you can look at that and see how much you've made?

A. Right. In fact, I think it's still on our

site. You can click that link on our site, and it will go to that Amazon page.

Q. Okay. I'll take a look at it. Have you ever received any financial or any other kind of support from -- let me just give you a list here. Okay?

A. Sure.

Q. You can say yes or no to each one. President Bush.

A. No.

Q. The Bush administration.

A. No.

Q. Bush campaign.

A. No.

Q. Republican party.

A. No.

Q. Any talk show host?

A. No.

Q. Any public figures of any kind?

A. No.

Q. You heard Michael's answers earlier about your financial, your bank accounts and your records and so on. Do you recall that?

A. Uh-huh. Yes.

Q. Do you disagree with anything he described?

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Consent:

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your web page come up?

A. I would say it definitely would come up, probably on the first page.

Q. That would be because?

A. Honestly, because of any other sort of relevant media attention that the lawsuit received. The fact that there are other articles on the web that put the two words in the one document, the fact those two words are also in one document we have, will make it more likely to come up.

But beforehand, before the lawsuit and before there was publicity or articles being written about it, you could type up anyone on the list and their name, and it was unlikely they would come up.

Q. Now, Michael talked about this. Is he known as Mike or Michael?

A. It depends on how you're dealing with him.

Q. Michael said you sell merchandise. Is it your opinion, too, that you're not making any income off of sale of the merchandise? You're just breaking even?

A. If that. Like I said, after expenses, especially for hotel room the last couple of days, that's going to put us in the negative,

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so we'll have to put in our own money.

The sale of merchandise month to month is about enough to pay for the bandwidth for that specific month. There's been times, like right around the election, where traffic was through the roof, and it cost us an arm and leg just to keep the site running, because people kept going to the Traitor List, the pages.

Every time one of those pages loads, it costs us money. We're paying -- it might cost a fraction of a cent, but if 20,000 people over the course of a couple weeks load it and load all 150 some pictures, we're paying for that.

Q. And you pay that to your domain?

A. To GoDaddy.

Q. By the way, do you -- the apartment you live in, do you own that or rent it?

A. We rent.

Q. Has your parents homeowner's insurance been covering any of your defense?

A. No, it has not.

Q. Do you have any -- have you found any insurance coverage you have that's helping to pay for your defense in this case?

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A. No, I have not.

Q. How have you been able to pay for the cost of this lawsuit so far?

A. I believe that's privileged.

Q. I mean other than to your lawyer. I mean it cost you to fly out here, didn't it?

A. It did.

Q. How did you pay for that?

A. I'm sorry, it didn't cost us to fly. We drove out here.

Q. How did you pay for that driving?

A. We paid for that with our own money, and the room here in Sioux Falls was paid for by the company.

Q. Which company?

A. ProBush.com.

Q. So it would be like considered a business expense?

A. Yes.

Q. As a matter of fact, the whole trip can be a business expense.

A. Yes, it can be, but we don't want to take it all out of the business, because there's not enough in there. So, again, we put our own money up.

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Q. For those kind of costs, has anybody made any promises to you they would reimburse you for those or pay any verdicts or settlements?

A. No.

Q. Do you know who the Federalist Society is?

A. I do not know who the Federalist Society is.

Q. To your knowledge have you ever purchased advertising for ProBush.com anywhere other than on your own website?

A. I can't specifically remember at this time. By the same token, I find it strange we wouldn't have at one time gotten advertising somewhere. Most of the time what you wind up learning is advertising on the web has no results. I think we probably paid for maybe 10,000 hits here or there. You go in one of those traffic websites, and they'll sell you 10,000 hits. They start sending traffic. When it hits 10,000, it's over. If anything, just that.

Q. Have you ever contributed content to the website?

A. Yes.

Q. What kinds of things are you responsible for on the website?

A. For a while I was running the newsletter, which

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we're not really following up on anymore. Kind of lost interest in it.

Q. So you don't have a newsletter anymore on the website?

A. We can put one in any day.

Q. But not right now?

A. It's just been procrastination things. Other than that, we both kind of share in the ideas. I don't know if anything specifically is my idea. I mean there's plenty of stuff in there that is specifically my idea, but I couldn't tell you which one it is unless we went over every item.

Q. You were an Independent before, and now you're a Republican. I mean is it your sense that there's more Republicans than Democrats in the United States right now?

A. That would be difficult to gauge. I would have to agree with you. There are probably more Republicans than Democrats.

Q. So business is better if you're a Republican right now than if you're a Democrat?

A. Yes.

Q. Does that have anything to do with the politics of your website?

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A. I'm sure on some level it does. It's always better to sell what's popular if you're trying to get some attention. Why sell an unpopular product?

Q. If Kerry had won, what would that have done to the ProBush.com?

A. We also own ProKerry.com. We were ready to unload that in the event he became elected President.

Q. So entrepreneurship before party politics?

A. As long as the country is still capitalist.

Q. Now, I need to ask you this series of questions. I asked Michael about it.

Before you developed the Traitors List, did you do any research on the individuals you listed on the Traitors List?

A. I personally did no research.

Q. Do you know if Michael did any?

A. None besides collecting their images off Google.

Q. Did you pay for any of those images you collected off Google?

A. No, we did not.

Q. For example, the Senator Abourezk image, do you know where you got that from?

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1 A. I would guess it came from Google.

2 Q. But you don't know what site that may have come from?

3 A. No. Google will offer you a reference at times, but everything has become very diluted on the Internet. Pictures are posted 10 times and then 10 times somewhere else, and the same picture goes around all over the web.

4 Q. You've never paid for any of that usage of that photograph or image of him?

5 A. That's correct.

6 Q. Why did you include Senator Abourezk on the Traitor List?

7 A. Simply because he signed his name to the Not In Our Name Petition.

8 Q. At the time you put him on there, did you believe he committed treason, as we defined in the Complaint, against the United States of America?

9 A. I did not.

10 Q. Have you ever believed that about Senator Abourezk?

11 A. No.

12 Q. To your knowledge has he ever been charged with or convicted of being a traitor to the United

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1 States of America?

2 A. Not to my knowledge.

3 Q. Now, has -- he was talking about a distinction between webmaster and domainer.

4 A. Domainer.

5 Q. Domaining?

6 A. Domaining. I am a domainer.

7 Q. You're the domainer. What's that mean?

8 A. Basically I buy and sell domain names, whether they be fresh registrations, as in a name that's never been registered before, or if I pick up an expired registration, which was someone else's website. They built the whole website and lost interest in it and let it expire, at which time I would collect it, pay or either take part in an auction. Or if no one else wanted it, I would take it myself. It generates traffic which generates money.

9 Q. If you hold those long enough, the person whose name might be closest to that might want to buy it from you at some point?

10 A. Typically, no. You don't try to engage in that kind of activity. That's cyber squatting.

11 Q. That's where you steal somebody's name and sell it back to them for more?

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- A. That's correct.
- Q. You don't want to do that?
- A. No. In fact, there's been instances where I have picked up a name, and the person has wanted it back, and they have to approach me, at which point I generally give it back to them for a reasonable cost, for time and fees, just for the money I paid to get the name.
- Q. Do you know anything about whether your pages are archived from time to time?
- A. As far as I understand, they are not or ever were archived.
- Q. You don't know if GoDaddy archives it at all?
- A. I do not believe GoDaddy archives it.
- Q. What were the reasons you felt -- I heard Michael's reasons. Why did you develop the Traitors List, or why were you involved in that?
- A. Traitor List is a parody. May not have been clearly defined in all points. If you're familiar with what a parody really is, the bottom line is if you would imagine all of these individuals and how they feel towards the government and the Bush administration, the parody is on them as if to say that this is how

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this group of people feels the government is becoming, as if to say they believe more that they're likely to be rounded up than we do.

That's where the parody lies. That it would more be something that they would concoct in their own mind. Thus us giving, leading it to being a parody of them.

- Q. I'm trying to follow that. That's a complex explanation.
- A. It is complex. A lot of the website is very deep with deep meanings like that that are a parody of a parody, or a parody with some other different undertones, which are a lot of, again, where I add to the website as opposed to my brother. So I go into some of the more finer things like that, and then he puts it up.
- He's not as familiar with the concept of parody and what the Traitor List parody actually means as I am, because I really --
- Q. For example, Saturday Night Live will do parodies of all kinds of things, like President Bush to Kerry, and they're making fun of something that's already occurred in a sense. Right?

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- A. Correct.
- Q. What website or what are you parodying with the Traitors List? What are you making fun of there?
- A. The parody is the overall tone of the left or liberal media and/or reaction to the Patriot Act, complaints of rights being squelched or squashed, washed away, and the whole point of people expressing that they are dissenting, although they're at the same time fearful their dissent will lead to their own persecution, or something along those levels.
- Q. And you don't believe that to be true, so, therefore, you're parodying it?
- A. Exactly.
- Q. You never heard Senator Abourezk, for example, say anything negative about President Bush, other than signing on to that Not In Our Name Petition?
- A. That is correct.
- Q. Did you perceive that to be negative?
- A. The tone of the petition, yes.
- Q. Towards President Bush.
- A. Yes.
- Q. Was there anything else offensive about it?

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- A. The overall tone of the petition struck to me that we're at a juncture where people kind of feel the need to not respect the President at the same time they dissent from him.
- I just felt like they didn't have to necessarily be mutually exclusive events. One can dissent and still respect the office of the President.
- I thought the Petition was, indeed in bad taste, and I believe those are my words, not my brother's, that the petition was made.
- Q. Was the Not In Our Name Petition treasonous against the United States?
- A. Not at all.
- Q. Other than that one petition, was there anything else that Senator Abourezk ever did that drew your ire at the time you put him on the Traitors List?
- A. No, there was not. In fact, he was in our mind, we knew nothing more about him than we knew about the 140 other people that had signed the Petition who were in the limelight, so to speak, the ones who signed it, endorsed it, and got the other members of the public to sign it, also.

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Q. Now, you remember receiving the e-mail, and then the legal letter after that from Mr. Epp asking you to take his name off the list. Do you recall that?

A. I do.

Q. You were around when that came. Correct?

A. Yes.

Q. Michael talked to you about it. Right?

A. Yes, he did.

Q. Did you feel as strongly about not taking him off as Michael did?

A. My reasoning for not taking him off was at the time the Senator had already escalating it by sending us a cease and desist to a legal level. If we were to remove him and issue an apology and pay him money, it would certainly lead the way for the breakdown of the rest of our site, and others would surely follow.

We do feel we legally are in the right. But the fact it was kicked off on a legal aspect and not a simple request.

Q. Got you mad?

A. Not mad. It got us careful.

Q. You were afraid it would open the flood gates.

A. I do understand the legal implications of

1 Q. I mean you've sat in here, I think you sat in
2 on his deposition yesterday.

3 A. Yes, that's true.

4 Q. You've seen him today?

5 A. Yes.

6 Q. Does he seem like a bad guy to you?

7 A. I could say honestly I like the guy. Seems
8 like a very nice guy.

9 Q. Do you still feel as strongly about not taking
10 him off the Traitor List after having spent the
11 last two days with him?

12 A. We actually discussed --

13 MR. PARSON: Don't get into any
14 attorney-client communication.

15 A. Right. As far as taking him off goes, if it
16 was my personal opinion at this point, I would
17 gladly take him off. I don't have anything
18 against the Senator. I think he's a great
19 man. I liked listening to him yesterday. I
20 thought he had some interesting stuff to say.

21 MR. PARSON: Also, for the record, we
22 offered to take him off and issue some sort of
23 an apology in exchange for dropping the
24 lawsuit. It was rejected by your side.

25 MR. ABOUREZK: To the extent that

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precedent.

Q. You were afraid he would open the flood gates and get more lawsuits or whatever.

A. Exactly.

Q. Did you feel like you were sort of holding up a standard for other Internet sites, as well, or were you more defending your own position?

A. We may well have been, but that wasn't our motive at all. It was strictly keeping in focus with what best we would need to do to protect ourselves and our rights.

Q. So even if you, for example, signed some sort of settlement agreement or whatever, you were still concerned about opening the flood gates?

A. Right, as far as any kind of public sentiment would have gone.

Q. Did you have money to pay for what he asked for initially, that \$2500?

A. No.

Q. Or \$2000.

A. We did not have it.

Q. You would agree with me that Senator Abourezk sufficiently communicated he didn't want to be on the list. Correct?

A. Yes.

1 addresses settlement negotiations, I would
2 object and move to strike that last comment.

3 Q. I think you indicated when you talked to South
4 Dakota Public Radio, that in hindsight you
5 thought "traitor" was a strong word.

6 A. Yes, it is a strong word.

7 Q. Do you still feel that way?

8 A. Yes, I do.

9 Q. You've made the statement before that, "We
10 don't believe that these people are traitors to
11 the United States. There is no traitorous
12 activity on their behalf." True?

13 A. True.

14 Q. You basically said that about all the people on
15 the Traitors List, didn't you?

16 A. That is correct.

17 Q. That was true of Senator Abourezk, as well?

18 A. Yes, it was.

19 Q. You told Joan Russell and South Dakota Public
20 Radio, you agreed you had called him a traitor
21 on the web page?

22 A. I believe the web page speaks for itself.

23 Q. So that's a yes?

24 A. As far as the website does say Traitor List,
25 does not single Senator Abourezk out, though.

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Q. At the time you put Senator Abourezk on the Traitor List, you knew he wasn't a traitor. True?

A. That is correct.

MR. PARSONS: I'll just object as ambiguous. The answer stands.

Q. You probably heard me ask Michael about this earlier. At the time you first, maybe in the first year you put this on the website, there was a lot of fear in our nation after the World Trade Center attack. Right?

A. I would say there was definitely fear across the nation.

Q. And fear of further attacks. Correct?

A. Yes.

Q. A lot of suspicion of individuals during that period of time?

A. I don't know if I would say a lot of suspicion towards individuals in general, no.

Q. The FBI got, we know from the press, they got a lot of reports on people that other people thought were suspicious. Right?

A. To my knowledge, there were no witch-hunts, if that's what you're asking.

Q. I'm not asking about witch-hunts. I'm talking

1 were out buying duct tape and plastic for their
2 homes. Correct?

3 A. That is correct.

4 Q. We know at least the climate of fear extended
5 up until a year ago.

6 MR. PARSON: Object as ambiguous. Go
7 ahead.

8 A. That's correct.

9 Q. For example, you're familiar with the country's
10 reaction to Japanese Americans in World War II
11 during the war.

12 A. I am.

13 Q. Being accused of being Japanese American today
14 has far and fewer implications than during
15 World War II. Correct?

16 A. It's kind of hard to accuse someone of being an
17 ethnicity. They are or they aren't. I really
18 couldn't follow that question.

19 Q. But being implicated as being Japanese
20 American. Let me say it that way.

21 A. Well, you are or you aren't.

22 Q. It has far fewer implications today than it did
23 back then in World War II. Right?

24 A. It has fewer implications to be a Japanese
25 American today than it did then.

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1 about the general atmosphere of suspicion.

2 A. I would agree up to the point there were not
3 witch-hunts.

4 Q. Would you agree with me that calling somebody a
5 traitor during that period of time would have
6 been a more serious allegation than it would be
7 today when we've kind of relaxed ourselves a
8 little bit more?

9 A. No. I really don't.

10 Q. Why not?

11 A. I believe at the time, in fact, more so then
12 than now, the term "traitor" was just a popular
13 term being thrown around, whether it be in the
14 media, public circles, and I do not believe the
15 Traitor List was actually published until
16 sometime late 2002. So we're talking a whole
17 year and a couple odd months past that.

18 I believe that's -- in addressing your
19 question, I would say if we had thrown up
20 Traitors the day of September 11, maybe there
21 would be a little more serious, but we're
22 talking a year and probably a couple months
23 afterwards.

24 Q. It was only a year ago that Tom Ridge moved us
25 up to the orange level of alert, and people

1 Q. I guess my whole point is in an atmosphere of
2 fear and suspicion that we talked about, even
3 up until a year ago, to be called -- to call
4 someone a traitor is a highly charged word or
5 set of words.

6 A. It is a strong word, and there is a lot of
7 strong rhetoric permitted in the United States.

8 Q. You published this website because you
9 supported President Bush. Right?

10 A. I published this website because there was a
11 niche for support for President Bush.

12 Q. So you are looking at it more from the business
13 angle?

14 A. That's correct.

15 Q. Would it be fair to say you wanted to stifle
16 some of the criticism of President Bush by
17 publishing the Traitor List?

18 A. Personally, no.

19 Q. Was it only your brother that felt that way?

20 A. Possibly. That would have to be addressed by
21 him. I mean I don't know.

22 Q. So you didn't have any political --

23 A. Very little. I am not very politically
24 motivated here.

25 Q. So as far as you're concerned, the Traitors

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List was not intended to back off critics of President Bush?

A. That's correct.

Q. If I remember right, on the South Dakota Public Radio, you indicated you believed you were doing the right thing by leading this country to the next phase, which is very stern patriotism, putting that in quotes. Is that correct?

A. Yes.

Q. What do you mean by stern patriotism?

A. Basically allegiance to the country and its policies and reflecting within the country reasonable and acceptable dissent and voices and argumentative speech, but stepping outside of the country, very important to stand as one to the rest of the world.

Q. Was the Traitors List a part of that stern patriotism you were talking about?

A. Again, the Traitors List reflected the parody I mentioned earlier.

Q. I understand that you made that your position in this lawsuit. But is the Traitors List a part of the stern patriotism you were describing on South Dakota Public Radio?

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A. No. The Traitor List has nothing to do with stern patriotism.

Q. Are you aware the Nazi party in the '30s, in their rise to power in Germany, used to call for stern patriotism?

A. No, I'm not aware of that.

Q. Would you agree with me that Nazi ideals are repugnant to the ideals of American democracy?

A. Yes, I would absolutely agree with that.

Q. You don't embrace those ideals, do you?

A. I do not.

Q. Have you ever been in contact with any of the bloggers or others who run political websites either here in South Dakota or elsewhere?

A. No.

Q. Regarding this lawsuit?

A. No.

Q. Regarding the Traitors List?

A. Correspondence, me, directly?

Q. You or your brother, Michael, to your knowledge.

A. To my knowledge, no.

Q. Based on your definition of parody, is it supposed to be funny?

A. Based on my definition? It's supposed to be

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amusing.

Q. You would agree with me that as far as you know, it's not -- that parody of Senator Abourezk hasn't been amusing to him.

A. I do understand that. I would hope that -- I'm sorry to hear that, that it wasn't as amusing to him as it was to others. All in all, most found it amusing.

Q. Are you the person who -- do you remember that exhibit I showed your brother? Exhibit 16. Are you the person that arranged to sell that space on your website?

A. This is not from our website.

Q. I copied that from a page in your website.

A. No. There's the web address right there. It's not.

Q. It was a link from your website.

A. Links leave the website.

Q. I hit it once. It was right in the middle of your website and that came up. Are you aware you were selling space for psychic and pornographic website on --

A. We signed up for the affiliate program for the psychic, and I actually wasn't aware of this page that goes there. We were selling

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psychic. We just thought it was amusing to put a psychic link up. No idea it had anything -- Live Video Chat. Again, it's not our website, so we're not responsible for that content.

Q. Even though you get there from your web page?

A. You can get to a lot of web pages from a lot of other web pages, and they're not responsible.

Q. Are you going to try to take that off your website, now that you know about it?

A. I might try to take -- try to find out if they have a purely psychic, something just for psychics. I do not want our visitors going to see live videos.

Q. You're going to have to do some research?

A. Yeah. I don't even know where that comes from.

Q. To your knowledge how much does it cost to keep the website going right now? What's your estimate?

A. Upwards of a couple hundred dollars a year.

Q. Again, I'm not talking about lawsuit costs or anything like that. Just do you anticipate it costs you more than that, more than a few hundred dollars a year?

A. No, unless there's an extreme explosion of

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bandwidth. I mean right now we're ranked somewhere around 200,000 as far as all the websites on the Internet go. They keep track of websites from like one to three million. We're somewhere in the 200,000 range, which is decent. If we were to move up to the below 100,000 range, between 1 and 100,000, that would definitely cost a lot more money.

Q. Would your answer be the same as your brother's as to why Jane Fonda and Roxanne Dunbar-Ortiz were added to the list, if you recall?

A. The list? I'm sorry, I thought you meant the lawsuit. They were added because they also signed the Not In Our Name.

Q. You also agree with your brother that initially the disclaimer was on the last page of the website?

A. It was at the bottom of the Traitor List.

Q. Twenty-four pages in basically. Right?

A. Scrolling.

Q. Are you planning on calling any expert witnesses in this case?

A. I have no idea.

MR. PARSONS: I object to the extent that would call for any communications with your

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attorney.

MR. ABOUREZK: He answered he has no idea, anyway.

MR. PARSON: Okay.

Q. Have you ever talked with this Professor Vololch?

A. No, I have not.

Q. Have you ever appeared on any television or radio programs, other than South Dakota Public Radio, about this lawsuit or the Traitors List?

A. No.

Q. And you were on that call-in program, when was that, the summer of 2003? Is that correct?

A. I believe so, if you're talking about the one where Mr. Epp was, also.

Q. Yes. I'll show you what's been marked Exhibit 8. Take a look at that, if you would. I'll represent to you that's a transcript of the radio program you were on.

A. Okay. This is it.

MR. PARSON: I'll object to the extent it assumes facts not in evidence regarding the complete accuracy of the transcript.

MR. ABOUREZK: I'll go ahead and offer that as an exhibit to your deposition.

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1 Q. Then, if you would, take some time and look at
2 it. If you see any inaccuracies, would you
3 report those to your attorney, and he could
4 provide those to me?

5 A. Sure.

6 Q. It will be a attached your deposition, so
7 you'll get a copy of it.

8 Was it your idea to put the disclaimer on
9 the website?

10 A. Yes, it was.

11 Q. What prompted that?

12 A. Like any business or organization that protects
13 itself. It was there basically for the same
14 reason. I'm familiar with the Larry Flint and
15 Hustler information, and I used that exact
16 wording.

17 Q. From Hustler?

18 A. From Hustler, which was found to be acceptable
19 by the, I believe the Supreme Court.

20 Q. Did somebody provide that to you?

21 A. No.

22 Q. Another website?

23 A. No. I took that myself.

24 Q. From the Hustler site?

25 A. Not from the Hustler site. Just I knew from

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1 the movie, from reading about it, from seeing
2 the inside of Hustler, that it says, "Parody,
3 not to be taken seriously."

4 Q. Now, if you -- it must not have been an obvious
5 parody, if you felt you had to put a disclaimer
6 in it.

7 A. That's not necessarily true. The disclaimer is
8 just there for general protection. It's
9 obvious with or without the disclaimer in my
10 mind.

11 Q. Other than Hustler, have you ever seen a
12 disclaimer in any other parodies, either on a
13 website or in print?

14 A. Plenty of times. I can't recall specifically.
15 I think Spy used to do it, Spy Magazine, used
16 to have parodies all the time. It would say,
17 "Parody, not to be interpreted," blah, blah,
18 blah. Some similar statement. I specifically
19 chose the one from the Larry Flint case,
20 though.

21 MR. ABOUREZK: I think I'm just about
22 done. I'm going to consult with my co-counsel
23 here.

24 (A recess was taken)

25 Q. One last question or two. I just want to

1 Q. Have you ever been sued before?
 2 A. No.
 3 Q. Have you ever had to sue anyone before?
 4 A. No.
 5 Q. Have you ever been a witness in any type of a
 6 case?
 7 A. No.
 8 Q. Have you ever been charged or convicted with a
 9 crime?
 10 A. No.
 11 Q. Are you a Republican?
 12 A. Registered Republican, yes.
 13 Q. Are you active in Republican politics?
 14 A. Yes.
 15 Q. Have you ever worked for a political candidate?
 16 A. No.
 17 Q. When and where did you incorporate ProBush.com
 18 or that organization that runs that website, if
 19 you did?
 20 A. I incorporated it on the Internet. In
 21 Pennsylvania you can incorporate on the
 22 Internet. I did that in my parents' basement.
 23 Q. What was the name of your corporation?
 24 A. ProBush.com, Incorporated.
 25 Q. Do you remember approximately when that was?

1 A. Early 2003, approximately.
 2 Q. Is that a for-profit or nonprofit?
 3 A. It's a -- I'd say it was for-profit.
 4 Q. Are there any shareholders in the corporation?
 5 A. I'm not sure about -- my brother. I mean we
 6 were partners in the corporation.
 7 Q. When you incorporated, did you issue shares to
 8 each other from the corporation?
 9 A. All I know is that I own 51 percent of the
 10 company, and he owns 49 percent of the
 11 company. That's all I can remember from when
 12 signing up on the Internet for the
 13 corporation.
 14 Q. Did you actually issue stock certificates or
 15 stock shares?
 16 A. Not that I know of, no.
 17 Q. Now, how is this website funded today?
 18 A. Personal money.
 19 Q. Your own?
 20 A. Personal and money that I make from the
 21 website.
 22 Q. When you say "personal," does that mean when
 23 you go out and work as a waiter, you put some
 24 of that money --
 25 A. I'm not a waiter anymore.

1 Q. What do you do now?
 2 A. I'm a salesperson, salesman.
 3 Q. Who do you work for?
 4 A. Solid Technologies, Incorporated.
 5 Q. What do you do for them?
 6 A. It's a small technology firm. I sell 3D rapid
 7 prototyping machines developed by Zee
 8 Corporation.
 9 Q. I don't know what any of that is. Could you
 10 explain that to me in layman's terms?
 11 A. It's a printer that prints conceptual models
 12 out of plaster powder using an HP printhead and
 13 sugar water binder.
 14 Q. You sell their product on the wholesale level
 15 or retail?
 16 A. We're a reseller, a value-added reseller in
 17 Blue Bell. They're headquartered out in
 18 Burlington, and we resell their product.
 19 Q. Burlington?
 20 A. Massachusetts.
 21 Q. Do you have any financial statements for
 22 ProBush.com?
 23 A. Yes.
 24 MR. ABOUREZK: I'd like to request a copy
 25 of those, Ron, of those financial statements.

1 MR. PARSON: Okay.
 2 Q. Also, have you ever had to file with the
 3 Department of Revenue in Pennsylvania or any
 4 state offices with regard to your business?
 5 A. Yes.
 6 Q. What kind of reports have you had to file?
 7 A. Pennsylvania state tax.
 8 MR. ABOUREZK: I'd like to also request
 9 copies of those returns, as well, from the
 10 corporation and the website.
 11 Q. Any other types of reports you've had to file
 12 over the years?
 13 A. Not that I can recall at the moment.
 14 Q. If you do recall, would you let your lawyer
 15 know?
 16 A. Absolutely.
 17 Q. And he can let me know.
 18 Now, I asked you a few questions about the
 19 website. I don't understand websites very
 20 well, but did you build the website yourself?
 21 A. Yes.
 22 Q. As I understand it, there's a place where you
 23 retain the website as host somewhere.
 24 A. Correct.
 25 Q. Who is your host?

Exhibit 3

Michael Marino

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1 A. GoDaddy.com.
 2 Q. What do you pay a month to have that host?
 3 A. It depends on bandwidth.
 4 Q. On average what would you say?
 5 A. Right now?
 6 Q. Yes.
 7 A. I pay about \$250 per year average.
 8 Q. Are there any other costs associated with
 9 maintaining that website other than that?
 10 A. There's costs that go into it, domain name
 11 purchasing, purchasing the domain name, hosting
 12 the account, e-mail accounts. There's multiple
 13 things in purchasing a website.
 14 Q. What would maintaining that domain name cost
 15 you?
 16 A. The domain name costs, I'd say between five and
 17 ten dollars, so you can purchase a domain name
 18 for five or ten dollars.
 19 Q. Is that a year?
 20 A. No. That's a domain name price. It depends on
 21 if it's available or not. If it's not
 22 available, there's other things that can go
 23 into it.
 24 Q. So it's a one-time fee?
 25 A. I believe so. I'm not sure. My brother is a

1 A. From home, yes.
 2 Q. What's that process entail? What do you have
 3 to do?
 4 A. I open a web publisher called Microsoft Front
 5 Page, and it brings up basically the web page.
 6 It brings up a blank Word document, and you go
 7 on from there. You design, develop a website
 8 using content and borders. Basically you
 9 decorate it. You decorate your website with
 10 words and pictures.
 11 Q. When you want to edit or modify something
 12 that's already on the website, is it a similar
 13 process?
 14 A. Yes.
 15 Q. Is it easy to modify it?
 16 A. Yes, for people who are web oriented. If you
 17 know nothing about the web, you wouldn't know
 18 how to do it.
 19 Q. Now, how often would you say you update or
 20 change that web page?
 21 A. Once a month.
 22 Q. Do you keep records of what items are added
 23 when?
 24 A. No.
 25 Q. Does anyone keep records of that?

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1 bigger domainer than I am. I'm not a
 2 domainer. I'm a webmaster.
 3 Q. What would you say total, if you were going to
 4 give me an estimate right now, what are you
 5 paying for that per year to keep that website
 6 up and running?
 7 A. I just told you, \$250.
 8 Q. I understand, but you gave me some other
 9 costs. I'm talking about all together.
 10 A. I gave you the all together.
 11 Q. You named some other things earlier, too.
 12 A. What's that?
 13 MR. PARSON: Domain name.
 14 A. Domain name, e-mail accounts. That's all
 15 included in a package you purchase from
 16 GoDaddy. It's in a package.
 17 Q. That's all \$250 for the whole package?
 18 A. Approximately, yes. It's all in that one
 19 package.
 20 Q. Now, how do you go in and change the content of
 21 your website? Do you do that yourself?
 22 A. Yes.
 23 Q. Do you do it from home?
 24 A. Do I do it from home?
 25 Q. Or from your office.

1 A. No. Mental.
 2 Q. Mental?
 3 A. Mental record.
 4 Q. Now, when I talk about the Traitor List, you'll
 5 know what I'm talking about here. Correct?
 6 A. Absolutely.
 7 Q. Where did you find this master list of
 8 celebrities that you used to formulate the
 9 Traitor List?
 10 A. The Not In Our Name Petition.
 11 Q. Where did you see that at?
 12 A. On the Internet.
 13 Q. And you essentially took well-known names from
 14 that list?
 15 A. Yes.
 16 Q. Not all the names.
 17 A. Names that didn't come up in Google, a Google
 18 search, per se. You type in a name in Google,
 19 if they came up on the image directory, that
 20 was it.
 21 Q. What was the reason for leaving off people who
 22 didn't come up on Google?
 23 A. What was the reason? I figured, you know, if
 24 their name was signed on a petition, and their
 25 picture, multiple pictures had come up on a

Google image search, I figured they were a public figure or famous of some sort.

Q. Why would you want to --

A. And it was associated. The Not In Our Name Petition had a lot of famous people on it that I could look at and notice.

Q. Why would you want to single out public figures or famous people to --

A. I didn't want to single out anyone. This was -- I was a little sick and tired of the protestors, the anti-Bush websites on the web. If you are on the web at all, I don't know, you'll find there's multiple anti-Bush websites calling him a murderer, a baby killer. I was a little tired of that. So I figured I'd throw a website to support our President.

Q. I guess what I'm talking about, you made a choice to leave off people who didn't come up on Google, and the people that did, who you earlier said were public figures, you decided to put them on your list. Why public figures?

A. Why public figures?

Q. Yes.

A. Because they're famous, and that's what causes traffic.

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Q. Causes what?

A. Traffic.

Q. Explain that.

A. Traffic on the web, you make money on traffic. The more visitors you get, the more possibility of them going to your store and so on, clicking on Hot Links.

Q. So, in other words, if I was just a person getting on Google, for example, and I typed in Abourezk, it would pop up your website, too.

A. Possibly.

Q. Is that what you mean by traffic? If you mean something different, tell me.

A. Controversy causes traffic.

Q. So you wanted to create controversy in order to get more visitors to your website?

A. Yes.

Q. Did you?

A. Absolutely.

Q. After you added those people in that Traitor List, how much of an increase did you see on traffic on your website?

A. It wasn't until after we had a Fox News article of something else on our website called the Ari Fan Club. He was a former press secretary,

1 Ari Fleischer. That's what basically boosted
2 the website up into, I guess into the eyes of
3 the Internet where it became a popular website
4 to go to.

5 Q. Did you believe the Not In Our Name Petition
6 had been done in bad taste?

7 A. Yes.

8 Q. Explain what you mean by that, by "bad taste."

9 A. I just didn't like what they said about our
10 President. They were disagreeing -- if I had
11 the Petition in front of me, I could read a
12 couple things off the Petition that I really
13 didn't agree with.

14 MR. PARSON: It is an exhibit.

15 Q. That's fine if you want to look at it.

16 MR. PARSON: Exhibit 7.

17 A. Statements such as, "The signers of this
18 statement call on the people of the United
19 States to resist the policies and overall
20 political direction that have emerged since
21 9-11, and which pose grave dangers to the
22 people of the world." That bothered me a
23 little bit, to resist the United States
24 policies. You live in the United States. How
25 can you resist their policies?

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1 Q. Anything else trouble you there?

2 A. I'd say the whole petition troubled me. I
3 could read the whole thing.

4 Q. That's okay. We can put it in and save some
5 time here. Other than creating traffic for
6 your website, were there any other reasons at
7 the time for the development of the Traitor
8 List?

9 A. To, I guess, counter the anti-Bush websites on
10 the web. There's multiple sites out there that
11 bash Bush. As you can see on the web, there's
12 not many pro-Bush websites. We kind of coined
13 the term "proBush."

14 Q. Now, you know how famous and infamous things
15 are created. Where did the actual idea, when
16 did it get developed? Was it you and your
17 brother talking?

18 A. ProBush.com?

19 Q. Yes.

20 A. It was probably conversations between me and my
21 brother -- my brother and I, excuse me, yes.

22 Q. What did you discuss with him?

23 A. Discussed how we would develop the website. It
24 kind of started as a real shabby website. It
25 was one page at one point. Then in web

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press?
 A. Yes.
 Q. Did you believe those press reports?
 A. No.
 Q. Would you agree with me calling a person a traitor during the period of time after the World Trade Center attacks is a lot more serious allegation than it would be today when the citizens are a little more relaxed?
 A. I'm not sure.
 Q. You're not sure in what sense?
 A. I don't know.
 Q. You published this website because you supported President Bush. True?
 A. Yes.
 Q. And you wanted to stifle some of the criticism of President Bush by publishing the Traitors List?
 A. Yes.
 Q. It was intended to back off critics of President Bush, wasn't it?
 A. Yes.
 Q. By calling those individuals traitors. True?
 A. Yes.
 Q. So there was at least some intimidation factor

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involved in the publication of that list.
 True?
 A. Intimidation?
 Q. Yes.
 A. Who am I intimidating?
 Q. You just admitted that it was intended to back off critics of President Bush.
 A. Back off. I'm not sure. The Traitor List was intended as a joke, a satire, a parody. That's about it. It was intended as a joke.
 Q. If you didn't think there was an atmosphere of fear in our country after the World Trade Center attack, why did you feel it was necessary to put a disclaimer in there that it was a parody?
 A. I speak with a lot of webmasters on the web, and they say if you're going to throw something controversial up, they recommended put in a disclaimer.
 Q. Did you do it to protect the people you had on the Traitors List?
 A. Did I do it to protect the people? Of what?
 Q. To protect the people who were on the Traitors List from someone taking that serious.
 A. I'm not sure.

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1 Q. You have the list identified as a Traitors
 2 List. Right?
 3 A. Correct. Just to make things clear, I mean --
 4 Q. Why would you feel the need to put a disclaimer
 5 on your list?
 6 A. For legal reasons.
 7 Q. If you weren't concerned that people were going
 8 to take that serious?
 9 A. I'm not sure.
 10 Q. You weren't concerned.
 11 A. Was I concerned about legal reasons?
 12 Q. I'm not talking about the legal reasons for
 13 now. Were you concerned about people taking
 14 the Traitors List seriously?
 15 A. No.
 16 Q. Never?
 17 A. No. If you run through the site -- if this is
 18 the only thing you look at on the site, no, I
 19 can't even say that, not with our top tool bar,
 20 especially if you click on the About Us page.
 21 Q. Explain that.
 22 A. The About Us page? You click on the About Us
 23 page, there's a picture of President Bush
 24 pointing or at a podium saying, "We hate Bush
 25 haters."

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1 Q. So you put the disclaimer on solely for legal
 2 reasons?
 3 A. Yes.
 4 Q. That was under -- by whose advice?
 5 A. My brother.
 6 Q. Do you know where he learned that from?
 7 A. No.
 8 Q. Was that you or your brother that appeared on
 9 South Dakota Public Radio?
 10 A. That was my brother.
 11 Q. Did you listen in to that radio show?
 12 A. No.
 13 Q. Were you on the other end of the conversation?
 14 A. No.
 15 Q. Do you know, have you learned, had a chance to
 16 learn since what he said?
 17 A. No.
 18 Q. Your brother said in that radio show that he
 19 believed he was doing the right thing by
 20 leading this country to the next phase, which
 21 is very stern patriotism. Do you also share
 22 that view?
 23 A. Sometimes.
 24 Q. Explain what you mean by sometimes.
 25 A. With stern patriotism?

Q. Yes.

A. I support my country one hundred percent, and I support my President one hundred percent, no matter who the President would be. I guess when you get the records of what ProBush.com owns and the income or anything like that, we also own ProKerry.com. So if he decides to run again, we will have a website ProKerry.com.

Q. What would be the purpose of that website?

A. A joke.

Q. Are you a Kerry supporter?

A. No.

Q. Would it be fair to say you're against Kerry?

A. Yes. But if he was my President, I would support him.

Q. What do you think is meant by the phrase "stern patriotism"?

A. I'm not sure.

Q. So it's your view in our democracy once someone is an elected leader, you must support them, no matter what.

A. If that's the way you're going to phrase it, yes.

Q. Did you support President Clinton?

A. Yes.

1 Q. In what branch and when?

2 A. I'm not sure. You'd have to ask him.

3 Q. Do you believe it's patriotic to volunteer for

4 military service?

5 A. Yes.

6 Q. Are you aware Senator Abourezk served in the

7 United States Military?

8 A. Yes, I am. Can I take a break?

9 Q. Can I ask one more question before you take

10 your break?

11 A. Sure.

12 Q. Does anyone else have the ability to get into

13 your website and modify it?

14 A. No.

15 Q. You're the only one that makes modifications?

16 A. Yes.

17 MR. ABOUREZK: Go ahead and take the

18 break.

19 (A recess was taken)

20 Q. Back on the record after a short recess. You

21 mentioned Senator Kerry, you reserved that

22 ProKerry.com. Correct?

23 A. I purchased ProKerry.com.

24 Q. You've got Senator Kerry on your Traitors List,

25 also. Don't you?

Q. All during his two terms?

A. Yes.

Q. In everything?

A. Not everything. I don't support President Bush in everything. There's voice for an opinion.

Q. So the times when you don't support President Bush, are you a traitor?

A. Am I a traitor?

Q. Yes.

A. To supporting him, yes, I'm betraying him. Sure.

Q. Have you ever served in the United States Military?

A. No.

Q. Why not?

A. Why not?

Q. Yes.

A. Never had a need for it. I don't know. I didn't want to. That's it. No.

Q. Do you ever plan on joining the military?

A. Yes.

Q. When?

A. I've thought about joining the Reserves.

Q. Has your brother ever been in the military?

A. Yes.

1 A. Yes.

2 Q. Just to be clear, since your attorney raised an

3 issue that there are a couple definitions you

4 are apparently working with. You know that

5 Senator Abourezk has never been a traitor to

6 his country. Right?

7 A. Yes.

8 Q. Have you looked at the definition of traitor

9 that's in the Complaint that was filed, the

10 lawsuit?

11 A. No.

12 MR. PARSON: That's Exhibit 1.

13 Q. Right in the Complaint we have, "According to

14 Black's Law Dictionary, a traitor is one who is

15 guilty of treason." You agree that Senator

16 Abourezk is not guilty of treason. Correct?

17 A. Yes.

18 Q. And you have no reason to believe he was at the

19 time you posted his name and photo on the

20 website. Correct?

21 A. Correct.

22 Q. Now, would it be fair to say you've got

23 unconditional respect for President Bush?

24 A. No. Unconditional respect?

25 Q. Yes.

Michael Marino

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1. That day.
2. Other than the Amazon affiliation we talked about, does your website belong to any other link exchange programs?
1. I don't know. You'd have to ask my brother. I'm not sure what you mean by link exchange.
2. Do you sell any merchandise on your website that specifically has to do with your Traitor List?
1. Yes.
2. And what do you sell?
1. Traitor hats, traitor shirts. That's about it.
2. Have you ever bought advertising anywhere else for ProBush.com?
1. I don't know.
2. Who would know?
1. Ben.
2. Are you the only person that contributes content to the website?
1. No.
2. Who else does?
1. My brother.
2. Just you two?
1. Yes.

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2. Do you have any ties or links to the Federalist Society?
1. No.
2. No?
1. I don't know. No.
2. Not to your knowledge?
1. Not to my knowledge, no. Not to my recollection.
2. Did you do any research on any of the individuals that you listed on the Traitor List before posting them?
1. No.
2. Why was Jane Fonda added to the list?
1. She's on the Not In Our Name Petition.
2. Why was Roxanne Dunbar-Ortiz added to the list?
1. She signed the Not In Our Name Petition.
2. Do you have any knowledge they committed any traitorous acts, as defined in our Complaint?
1. No.
2. Has the Traitors List changed over time? Have you added or deleted?
1. Yes.
2. Who has been -- has anyone been deleted? Let's start there.
1. I don't know.

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- 1 Q. Would you have been the one that did the deletions?
- 2 A. Uh-huh.
- 3 Q. You don't recall ever deleting anyone?
- 4 A. I recall deleting -- I can't recall, no. I do recall deleting some people. I can't recall which ones.
- 5 Q. Did you add people?
- 6 A. It was basically to save bandwidth for pictures, picture size.
- 7 Q. Did you add people?
- 8 A. Yes.
- 9 Q. Who did you add?
- 10 A. Noodles, Howard Stern.
- 11 Q. Why did you add Howard Stern?
- 12 A. If you listen to Howard Stern, you would understand why I added him. He's just -- I don't know.
- 13 Q. Is he critical of President Bush?
- 14 A. Yes.
- 15 Q. Is that the main reason?
- 16 A. That's it.
- 17 Q. Who was the other person you talked about adding?
- 18 A. Noodles. He requested to be on the list.

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- 1 Q. He requested.
- 2 A. Correct.
- 3 Q. Anyone else?
- 4 A. No. It's most of the people from Not In Our Name. No.
- 5 Q. At one time you did issue an apology on the website to an individual by the name of Michael Albert. Correct?
- 6 A. Yes.
- 7 Q. That was because you published the wrong picture?
- 8 A. Yes.
- 9 Q. So it's possible to publish an apology on this website. Correct?
- 10 A. Yes.
- 11 Q. I'm going to show you what's been marked as Exhibit 15. Again, this was downloaded from a few days ago from your website. Do you recognize that?
- 12 A. Yes.
- 13 Q. That appears to be an attempt to sell places on the Traitor List. Is that correct?
- 14 A. Yes.
- 15 Q. Have you sold any yet?
- 16 A. No.

Michael Marino

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Q. How much are you asking? How much are you asking for those spots?

A. It's right on the Exhibit 15.

Q. How much is it?

A. There's multiple levels.

Q. Multiple levels you can enter on the Traitor List?

A. It's a joke. Yes. There's pay pal links. I don't think they even work now, the Buy Now links. There's things on my site where if you click, it will just disappear.

Q. But not one person has taken up your offer to buy a traitor list spot.

A. No.

Q. Does that surprise you?

A. No.

Q. When you first created the Traitor List, do you remember approximately when that was?

A. No. I don't know. The beginning phases of developing the website while it was under construction.

Q. So it was one of the first things that went up?

A. No, it wasn't one of the first things that went up.

Q. How soon after you went up?

1 Q. So you would have had to scroll through the 24

2 pages to get to the disclaimer. Is that

3 correct?

4 A. Yes.

5 Q. Later on did you move the disclaimer to a

6 different location on your website?

7 A. After this lawsuit had started, I believe I

8 moved it to the top of the page.

9 Q. Why?

10 A. I believe it was a conversation with either Ron

11 or my brother.

12 MR. PARSON: Don't disclose attorney

13 conversations.

14 Q. At least with your brother.

15 A. Sure.

16 Q. What did the disclaimer say when you first put

17 it up when it was at the bottom of the page?

18 Is it the same as it is now, or did it change?

19 A. Say that again.

20 Q. The wording of the disclaimer, has it always

21 been the same?

22 A. No.

23 Q. When did you change it?

24 A. I'm not sure.

25 Q. Do you know what it said originally?

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Months after.

Several?

Several.

Two or three?

More. I'd say six to 12, almost a year.

So it would have been in early 2003, late 2003?

It was actually right around where -- I'd say middle of 2003.

Now, when was the disclaimer that you referred to first added to the Traitor List?

The disclaimer was first added to the Traitor List as soon as it went up.

Simultaneous?

Yes.

It was never without a disclaimer?

Yes.

By "yes," you mean --

It was never without a disclaimer. Correct.

Where was the disclaimer located at when you first put it up?

The disclaimer originally was at the bottom of the page.

How many pages were there, approximately, at that time? Twenty-four?

Approximately.

1 A. Yes.

2 Q. What did it say originally?

3 A. "Parody not to be taken seriously. These

4 traitors are not legal traitors of the United

5 States, though we wish they were."

6 Q. Later on when you changed it, what did you say?

7 A. "Parody not to be taken seriously. These

8 traitors are not legal traitors of the United

9 States."

10 Q. You took off "though we wish they were"?

11 A. Yes.

12 Q. Why did you say "though we wish they were"?

13 A. Political tone.

14 Q. What does that mean, though? Why "we wish they

15 were"?

16 A. I don't know.

17 Q. What did it mean to you?

18 A. It doesn't mean anything to me. I don't know.

19 Q. You just put stuff on there without meaning?

20 A. I don't know.

21 Q. By saying "we wish they were," was that an

22 expression that you hope --

23 A. It was a joke.

24 Q. -- you'd hope they be put in prison?

25 A. No.

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- Q. Shot?
- A. No.
- Q. Do you plan to call an expert witness in this case?
- A. I don't know.
- Q. You haven't discussed it at all?
- MR. PARSON: Don't disclose attorney-client conversations.
- Q. Other than with your attorney, have you discussed it at all?
- A. I don't know.
- Q. Have you discussed having any other groups come into this lawsuit as amicus or friend to the Court?
- A. I don't know.
- MR. PARSON: An amicus brief was filed in conjunction with our Motion to Dismiss, that being the Electronic Frontier Foundation, and Professor Eugene Volokh, who is a Constitution law professor.
- Q. Mr. Marino, do you know Professor Volokh?
- A. No.
- Q. Have you ever spoken with him?
- A. No.
- Q. Do you archive your website?

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- A. No.
- Q. Does anyone else archive it automatically for you?
- A. No, not that I know of.
- Q. I believe you indicated earlier you don't keep pages of different versions of your website?
- A. No.
- MR. ABOUREZK: I need to take about a minute. I need to talk to Todd about something.
- (A recess was taken)
- I need to ask you specifically this. Did you have a disclaimer regarding the Traitors List on or about April 7 of 2003?
- Yes.
- Your website notes, and I'm quoting here, "E-mails sent to ProBush.com is monitored by the U.S. Government." Is that a joke?
- Yes.
- It's not monitored by the U.S. Government, is it?
- No.
- The claims Senator Abourezk made, how do you feel they're barred by the U.S. Constitution, if you know?

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- 1 MR. PARSON: Object to the extent it calls
- 2 for a legal conclusion, but you can answer.
- 3 A. I don't know.
- 4 Q. You also assert that the communication question
- 5 is not defamatory. Do you know what that
- 6 means, "not defamatory"?
- 7 A. Yes.
- 8 Q. How did you arrive at that conclusion?
- 9 A. What conclusion? Say the question again.
- 10 Q. You believe what you say about Senator Abourezk
- 11 is not defamatory. Why?
- 12 A. I don't know.
- 13 Q. Do you believe it's not defamatory?
- 14 A. No, I don't believe it's defamatory.
- 15 Q. Why?
- 16 A. I don't know why.
- 17 Q. Do you have any facts you know of or are aware
- 18 of that would show it's not defamatory?
- 19 A. I don't know.
- 20 Q. You don't have any?
- 21 A. I don't know.
- 22 Q. You state in your Answer, which I'm sure your
- 23 attorney prepared for you, that, "The
- 24 communication about Senator Abourezk cannot
- 25 reasonably be interpreted as stating actual

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- 1 facts about the plaintiff." Do you understand
- 2 that?
- 3 A. Not really.
- 4 Q. Do you believe it did not state any actual
- 5 facts about the plaintiff at the time it was
- 6 made?
- 7 A. I don't know.
- 8 MR. PARSON: I'll object to the extent it
- 9 calls for a legal conclusion, but you can
- 10 answer.
- 11 A. I don't know.
- 12 Q. I'll re-ask it this way. Do you believe that
- 13 what you put on your website stated any facts
- 14 about Senator Abourezk?
- 15 A. I don't know.
- 16 Q. You don't know if it did or didn't?
- 17 A. I don't know.
- 18 Q. Since you didn't know, and you put it on there,
- 19 anyway, would that be fair? You put it on your
- 20 website, even if you didn't know whether it was
- 21 factual or not?
- 22 A. I'm not sure.
- 23 Q. You put it on your website. You agree with
- 24 that.
- 25 A. Yes. I put -- I developed the Traitor List,

yes.

You didn't know whether it was factual or not at the time you put it on, did you?

The Traitor List is not factual.

And you knew it was not factual at the time you put it on there. Correct?

MR. PARSON: Object to it as ambiguous as to the meaning of "factual," but you may answer.

I don't know.

Did you believe it to be factual at the time you put it on there?

Factual? No. There's no fact. No. It's a joke.

No basis for fact.

Just satire.

What's your understanding of what a parody is? A joke.

Have you ever looked up the word parody in the dictionary?

Maybe.

Still your understanding is it just means a joke?

Yes.

I can't remember if I asked you this earlier.

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Have you ever appeared in any television or radio program anywhere in the United States regarding the Traitors List or this lawsuit?

Not to my recollection.

You allege in your Answer that as an affirmative defense that Senator Abourezk failed to mitigate his damages. Do you believe he has done something to make his damages worse in this case or has refused to lessen the damages?

MR. PARSON: I'll object only to the extent it calls for a legal conclusion, but you can answer.

A. I don't know.

You don't know if he has or not. You have no facts to that effect one way or another?

A. No.

MR. ABOUREZK: I think we're almost done, if I can just talk to these guys real briefly.

(A recess was taken).

Q. I need to go through my exhibits real quick here. I'll show you Exhibit 17. Again, I'll represent I downloaded this two days ago from your website. This is essentially the pages that have to do with the lawsuit. Would that

be fair to say?

A. This is the home page. This is where you would go if you typed in ProBush.com.

Q. It references the lawsuit?

A. That's an article.

Q. About the lawsuit?

A. Correct.

Q. It also makes a pitch for support regarding the lawsuit. Is that correct?

A. Where? These are two articles.

Q. Let me take a look at it. On Page 2 it says, "Please donate to ProBush.com legal's battle against former Senator James Abourezk."

A. Yes.

Q. That's a section about supporting you guys in the lawsuit. Correct?

A. Yes.

Q. That's on Page 2 of Exhibit 17. Correct?

A. Correct.

Q. You also make some comments about Hizbullah.

A. Hizbullah.

Q. How do you pronounce it?

A. Hizbullah.

Q. Why did you put that on there?

A. I don't know why.

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Q. Are you the one that put it on there?

A. I was the one that wrote the content. I wasn't the one who --

Q. Why did you put it on there?

A. It wasn't my decision to put that on there.

Q. Whose decision was it?

A. Ben's.

Q. What did Ben tell you?

A. I don't know.

Q. Approximately what did he tell you, as best you can recall?

A. I can't recall.

Q. You would agree with me all these pages are essentially one continuous page having to do with the lawsuit. Correct?

A. One continuous page? This is the home page. Do you mind if I take the staple out?

Q. No, that's fine.

A. If it were to be set up, while controlling down the web page, it would be set up like this.

Q. So when I'm interested in reading the articles and looking at your plea for support, that would be one continuous thing I would see.

A. You would see multiple things as you scroll down. You'd see the legal arena, the first

Yes.
Bruce Willis, how did he get on here?
He's a known supporter of President Bush.
Tippi Hedren?
Very well-known supporter of President Bush.
Speaks out very often.
And who is Neal Boortz?
Radio talk show host.
You have a deal at the end there that you can
add an honorary patriot?
Anybody that has heard of any celebrity
supporting our President can e-mail me, and
I'll add them to the Patriot List. I'll do my
own research whether or not they support our
President.
Now, you've trademarked the Patriot List, as
well. Right?
Yes.
And you've trademarked the Traitor List?
Yes.
Who registered that trademark?
I'm not sure. You'd have to ask my brother
about that.
So you don't know whether it was the
corporation or your brother?

1 is?
2 A. Yes.
3 Q. What is it?
4 A. No, I don't. No. Excuse me. I don't know his
5 nationality. I know he's from somewhere in the
6 Middle East. That's about it. Lebanon, I
7 believe. Lebanese.
8 Q. How did you find that out?
9 A. Google search on James Abourezk or his
10 bibliography on U.S. Senate website.
11 Q. Did you do some research on Senator Abourezk
12 after the lawsuit started?
13 A. After the lawsuit, yes.
14 Q. You searched on Google?
15 A. Yes.
16 Q. What else did -- did you research anywhere
17 else?
18 A. No.
19 Q. How would you classify this site? Is it a
20 political site?
21 A. I would classify it as a political satire.
22 Q. Site?
23 A. Site.
24 Q. It's not an online newsletter like Slate or
25 something like that.

I'm not sure. I don't know.
MR. ABOUREZK: I'll offer Exhibit 14
then.
MR. PARSON: No objection.
Now, since you're 51 percent owner of this
corporation, do you have the final say about
content?
No.
Is that a mutual decision between you and your
brother?
Yes.
Jeff Gannon, do you know anything about his
background, the guy that's been helping you?
No. All I know is he's a reporter.
He runs the Talon News Service, doesn't he?
I'm not sure if that's his. I see articles on
that website.
Mr. Gannon used to work for Republican
administrations previously, didn't he?
I'm not sure. I don't know.
Other than Mr. Gannon's organization, has
anyone else offered help like he's offered?
The ACLU offered help, but I had already gotten
-- the ACLU offered help, yes.
Do you know what Senator Abourezk's nationality

1 A. I've never heard of Slate.
2 Q. You wouldn't classify it as an online
3 newsletter, would you?
4 A. I'm not sure. I don't know.
5 Q. Would you classify it as an online newspaper?
6 A. I don't know. No.
7 Q. You wouldn't?
8 A. I'm not sure. I consider my website a website.
9 Q. You wouldn't classify it as an online magazine,
10 would you?
11 A. No.
12 Q. So would it be fair to say it's not either a
13 newsletter, newspaper, or magazine?
14 A. No.
15 Q. It's not fair, or would it be fair to say that?
16 A. It's not anything that you have mentioned.
17 MR. ABOUREZK: I think we're done.
18 MR. PARSON: You have the right under the
19 rules to read the transcript before it becomes
20 official to make sure it was transcribed
21 accurately. You can waive that right. I would
22 advise you to waive that right.
23 THE WITNESS: I waive that right.
24 (Witness excused)
25

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I pledge Allegiance to the flag
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America and to the Republic
for which it stands, one nation
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Bush Hater?

**Ordinary citizens like yourself now
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Traitor Slot # 1 - \$10,000.00 *includes name
link, certificate, and hat!

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certificate, and hat

Random Slot #50 and below plus name link- \$140.00
*includes certificate and hat

Once you have made your pay pal payment
please email your full name and picture to
traitorslots@probush.com

**Exhibit
13**

Get Your Traitor Slot!

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TRIBUTES

- [U.S. Armed Forces](#)
- [Ari Fleischer](#)
- [Bruce Kieloch](#)
- [Ben Jr.](#)
- [Portland Police Dept.](#)
- [Mr. "Algor"](#)

[Official Al Gore is a Dick Page](#)

[John Fairy Kerry](#)

[The Homeland Page](#)

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[Executive Orders](#)

[Official Iraq Voting Form](#)

[Gay Dancers @ UN](#)

If you decide to purchase a traitor slot from ProBush.com you will receive the honor of being added to this world famous list, a certificate of authenticity from ProBush.com, and a traitor hat. When traitor slot #'s 1,3, and 5 are purchased, the name of that person may be linked anywhere on the web. If you decide to buy a Random Slot below #50 (\$100.00) you may choose the option of an additional one time fee of \$40.00 for your name to be linked anywhere on the web.

FAQ:

Q. Is this for real?

A. Yes. You now have a chance to be on the world famous Traitor List™.

Q. What is a name link?

A. Once you have purchased a traitor slot from ProBush.com your name will have its own link to anywhere on the web you would like.

Q. Will being on the Traitor List™ make me as cool as some of the other traitors?

A. Yes. Becoming a traitor makes you cool.

Q. Will I receive an invitation to next years Academy Awards?

A. Who knows, with hard work anything is possible.

Q. What kind of picture do I send ProBush.com?

A. We accept most files but we do prefer that it be in a .jpg or .gif file. Please send us a headshot only. If you do not have a headshot go buy a digital camera and take one.

Q. Who shot JFK?

A. That's a good question.

Q. How do you randomize the people that will be #'s 50 and below?

A. The webmaster will do the randomizing. Keep in mind that ProBush.com works on a first come first serve basis.

Q. How long will it take?

A. ProBush.com will review your name and picture after we have received your payment. You will receive a confirmation email within 24 hours of your purchase. ProBush.com reserves the right to reject any submissions.

[Global
Summit](#)

Q. If George W. Bush does not get re-elected in 2004 will the Traitor List™ still exist?

[Ari Fan
Club™](#)

A. George W. Bush will not lose.

[ProBush.com
Stickers](#)

Q. What's the difference between "Algor" and a bucket of vomit?

A. The bucket

[Random Headlines](#)

Q. When I log off the internet will I still be on the Traitor List™?

[Random Articles](#)

A. Yes.

[Random Quotes](#)

Q. What kind of hat do I get?

[How laws are made](#)

A. An Official ProBush.com Traitor Hat.

[CIA report on Iraq's
weapons of Mass
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Q. May I submit other people to the Traitor List™?

Contact the
webmaster@probush.com

A. No. You can only submit yourself.

Email sent to ProBush.com is
monitored by the U.S.
Government

Questions? Email the webmaster@probush.com

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